

REMARKS

In the Office Action dated November 19, 2004, claims 1-31 were presented for examination. Claims 1, 4, 6-7, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by *Ho*, U.S. Patent No. 5,615,373, and claims 2, 3, 5, 8-14, 18-23, and 26-30 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant wishes to thank the Examiner for the careful and thorough review and action on the merits in this application.

I. 35 U.S.C. §102(b) - Anticipation by *Ho*

Claims 1, 4, 6-7, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being unpatentable over *Ho*, U.S. Patent No. 5,615,373.

Applicant's remarks pertaining to *Ho* presented in the Response to the First Office Action, are hereby incorporated by reference.

Applicant's invention pertains to selection of an optimal locking form based upon system measurements. The selection of Applicant is the lock form, not the lifetime of the lock. In *Ho*, the formative of the lock has been selected, and it is the lifetime of the lock that is selected based upon system measurements. *Ho* does not determine the type of lock that may be appropriate based upon system measures. Rather, the mode of *Ho* pertains to the lifetime, *i.e.* duration, of the lock. There is no support in *Ho* that pertains to selection of a lock form. In fact, *Ho* specifically states the subject matter of the invention as pertaining to a variable lifetime data lock. "[T]he lock lifetime is determined in either a static scheme or a dynamic scheme based on system operating statistics and other parameters." Col. 4, lines 39-41. Applicant's claimed invention provides that a lock form, *i.e.* formative of the lock, is determined in response to the system

measures. Claims are interpreted in view of the accompanying specification. There is no support in *Ho* for using the system measures to select an optimal lock form. Accordingly, *Ho* neither teaches or implies Applicant's limitations of determining a lock form, wherein the form pertains to the form of a reader-writer lock or an exclusive lock, as opposed to *Ho* which determines a duration of a lock form.

In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *Ho* does not show all of the elements as claimed by Applicant in pending claims 1, 4, 6-7, 15-17, 24-25, and 31. Specifically, *Ho* does not show a method or system for selecting a lock form, *i.e.* lock formative, in response to system measures, rather *Ho* shows a grouping of processors and a method for calculating a lock lifetime, *i.e.* a lease, in response to system measures. Accordingly, *Ho* clearly fails to teach the limitations pertaining to the selection of a lock form, as defined by Applicant as presented in Applicant's pending claims 1, 4, 6-7, 15-17, 24-25, and 31.

"[A] previous patent anticipates a purported invention only where, except for insubstantial differences, it contains *all* of the same elements operating in the same fashion to perform an identical function." *Saunders v. Air-Flo Co.*, 646 F.2d 1201, 1203 (7th Cir. 1981) citing *Popeil Brothers, Inc. v. Schick Electric, Inc.*, 494 F. 2d 162, 164 (7th Cir. 1974) (holding patents were not invalid as being anticipated by or obvious in light of prior art) (*emphasis added*). *Ho* does not anticipate the invention of Applicant based upon the legal definition of anticipation. Although the prior art cited by the Examiner relates to processors and locks associated therewith, *Ho* fails to show each and every element as presented in Applicant's claimed invention. In fact, *Ho* does not show determining a lock form responsive to system measures. Rather, *Ho* shows determining a lock lifetime, *i.e.* the duration of a lease for a lock, in response to system measure. A lock form as defined by Applicant pertains to the implementation of the lock, *i.e.* "forms that provide efficient modes of operation for differing levels of

contention", see page 7, lines 16-17, whereas a lock lifetime pertains to the term in which the granted lock will be active. The lock form of Applicant is not an equivalent element to the lock lifetime of *Ho*. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 1, 4, 6-7, 15-17, 24-25, and 31.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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